

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
NORTHERN DIVISION

ELAINE BEAN, WILLIAM BEAN, and
IRIS NICHOLS,

Plaintiffs,

v.

No. 2:06 CV 40 DDN

GBTI, INC.,
DONALD R. SHEARER,
GILL BROTHER'S TRUCKING,
HARNINDER S. GILL,
CHARAN S. GILL,
PAKHAR S. GILL,
HARJINDER S. GILL,
GURDIAL S. GILL, and
MATTHEW C. HENRY,

Defendants.

GBTI, INC., and
DONALD R. SHEARER,

Third-Party Plaintiffs,

v.

TINA RAADMAE, NANETTE PANNING,
RICHARD MILLER, MATTHEW FRANKLIN,
WILLIE BURNETT, CHARLES BERTRAM,
DANIEL HEFFERMAN,
LOWELL PALMQUIST, GARY SPRINGER,
SARA HUMISTON, PAULA BRYSON,
DANIEL BRYSON, MATTHEW HENRY,
FRANK STAPLES, HOWARD WAGLER,
AUBREY MORRISON, THOMAS BECK,
DEREK NOSKER, THE MISSOURI
STATE HIGHWAY PATROL, and THE
MONTGOMERY COUNTY SHERIFF'S
DEPARTMENT,

Third-Party Defendants.

ORDER VOLUNTARILY DISMISSING CERTAIN THIRD-PARTY CLAIMS

On May 21, 2007, at 1:30 p.m.,¹ defendants and third-party plaintiffs GBTI, Inc., and Donald R. Shearer filed a joint motion for leave to file a voluntary dismissal of their third-party claims against the following third-party defendants without prejudice (Doc. 88)²: Tina Raadmae, Nanette Panning, Richard Miller, Matthew Franklin, Willie Burnett, Charles Bertram, Daniel Hefferman, Lowell Palmquist, Gary Springer, Sara Humiston, Paula Bryson, Daniel Bryson, Matthew Henry Frank Staples, Howard Wagler, Aubrey Morrison, Thomas Beck, The Missouri State Highway Patrol, and the Montgomery County Sheriff's Department.

Under Federal Rule of Civil Procedure 41(a)(1), a claim may be dismissed voluntarily by a claimant if the defendant had not yet filed an answer or a motion for summary judgment. F. R. Civ. P. 41(a)(1). Therefore, because by May 21, 2007, at 1:30 p.m., each of the following third-party defendants had not filed either an answer to the third-party complaint or a motion for summary judgment,

IT IS HEREBY ORDERED that the motion of the third-party plaintiffs to dismiss voluntarily third-party claims without prejudice (Doc. 88) is sustained as to third-party defendants Tina Raadmae, Nanette Panning (also filed consent to motion), Charles Bertram, Daniel Hefferman, Lowell Palmquist, Gary Springer, Paula Bryson, Daniel Bryson, Matthew Henry, Frank Staples (also filed consent to motion), Aubrey Morrison, Thomas Beck, The Missouri State Highway Patrol, and The Montgomery County Sheriff's Department.

Because the following third-party defendants filed consents to the motion to dismiss without prejudice,

IT IS FURTHER ORDERED that the motion of the third-party plaintiffs to dismiss voluntarily third-party claims without prejudice (Doc. 88)

¹The time of day is determined by reference to the respective copy of the electronic notification receipt which resides in the electronic file record of the court.

²The court considers the subject motion as a motion to dismiss under F. R. Civ. P. 41(a)(1).

is sustained as to third-party defendants Matthew Franklin, Willie Burnett, and Sara Humiston.

Although they filed pre-May 21, 2007 answers and did not file express consents to the motion to dismiss without prejudice, because the following third-party defendants did not respond and object to the subject motion (nor did any third-party defendant file an express objection to the subject motion),

IT IS FURTHER ORDERED that the motion of the third-party plaintiffs to dismiss voluntarily the third-party claims without prejudice (Doc. 88) is sustained as to third-party defendants Howard Wagler (answer filed May 10, 2007) and Richard Miller (answer filed May 17, 2007).

/S/ David D. Noce
UNITED STATES MAGISTRATE JUDGE

Signed on June 5, 2007.